

Construction & Procurement Frequently Asked Questions

What delivery methods may public school districts utilize for construction projects?

When the estimated cost of a construction project exceeds \$10,000, a school district must utilize one of the following delivery methods.

1. Competitive Bidding. Projects between \$10,000 and \$20,000: Facilities projects may be bid in the same manner as any other commodity purchase exceeding \$10,000. (Authority: Ark. Code Ann. §§ 6-21-301 & 304.)

Competitive Bidding. Projects over \$20,000: Notice of a district's intention to receive bids must be published in a local newspaper or construction industry trade journal – the notice must run at least once per week for two weeks, with the final notice being published at least one week prior to bid opening. The bid must be awarded to the lowest responsible bidder, but only if the district believes its best interests will be served by that bidder. If the bids are all too high, the district may negotiate with the low bidder if that low bid is within 25% of the project budget. (Authority: Ark. Code Ann. § 22-9-203.)

2. Construction Management. A school district may retain a construction manager to provide services such as design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. A district must choose a construction manager based on a Request for Qualifications without competitive bidding. However, all subcontracts, construction trade work, and supply purchases, procured by the district itself and exceeding \$10,000 must be competitively bid. (Authority: Ark. Code Ann. § 19-11-801; Commission Rules and Regulations Governing the Use of Construction Management as a Project Delivery Method.)

3. Design-Build Construction. A school district may retain a design-builder to provide both design (architecture, landscape architecture, and engineering) and construction services as part of the same contract without competitive bidding. The design-builder may be chosen based on a Request for Qualifications without competitive bidding. The design-builder contracts directly with all subcontractors and must furnish a 100% Performance and Payment Bond. (Authority: Ark. Code Ann. § 19-11-807; Commission Rules Governing the Use of Design-Build Construction by Public School Districts.)

4. Lease. A school district may lease facilities, including those newly constructed by a private entity for the district. However, leased facilities are not eligible for facilities program funding. Any leased facilities must be inspected by the Division of Public School Academic Facilities and Transportation prior to execution or renewal of the lease. (Authority: Ark. Code Ann. § 6-21-117.)

5. Public-Private Partnerships (Lease-Purchase). A school district may enter into a lease-purchase agreement with a private entity to construct a facility using the proceeds of tax-exempt bonds issued by the state pursuant to 26 U.S.C. § 142 (a)(13) and (k), so long as the lease term is thirty years or less. (Authority: Ark. Code Ann. § 6-20-402 (a)(1)(B).)

6. Energy Performance Contracting. A school district may use a Request for Qualifications process to select a provider to implement energy conservation measures in new building designs or existing buildings. These measures may include insulation, storm windows or doors, energy control systems, HVAC modifications or replacement, lighting fixture modification or replacement, indoor air quality improvements, and other infrastructure improvements that provide long-term operating cost reductions. Providers must be approved by the Division of Public School Academic Facilities and Transportation. These improvements may be financed for up to fifteen years utilizing post-dated warrants, installments contracts, or lease-purchase agreements. The contract may provide that the cost of the improvements will not exceed the operations or energy costs to be realized over the course of the purchase agreement. (Authority: Ark. Code Ann. §§ 6-20-401, 6-20-402, and 6-20-405.)

7. Public-Public Partnerships. A school district may enter into a contract to partner with another public entity in a construction project, so long as the materials and construction services are procured by a method legally permissible for both entities, and so long as the school district is the primary user of the facility. (Authority: Ark. Code Ann. § 6-20-414; Division Rules Governing the Use of Public-Public Partnerships by School Districts.)

8. Self-Construction Projects. A school district may use its own employees for a construction project, and it may act as its own general contractor. Any subcontracts exceeding \$20,000, and any purchase of materials exceeding \$10,000, must be competitively bid. (Ark. Code Ann. § 6-21-109; Commission Rules Governing Self-Construction Projects by Public Educational Entities.)

Are there special rules to follow when renovating historic sites?

Yes. Historic site renovations must be competitively bid if the estimated value of the project exceeds \$10,000. The other delivery methods outlined above cannot be utilized in lieu of competitive bidding. (Authority: Ark. Code Ann. § 22-9-209).

Are public school districts subject to the prevailing wage laws?

Most government construction projects must pay the workers a minimum prevailing wage. This requirement does not apply to public school districts, unless the project is funded in part or in whole by federal matching funds. (Authority: Ark. Code Ann. § 22-9-302 & 303.)

Who must approve building plans?

Plans and specifications for any new building or addition must be approved by the Commission for Arkansas Public School Academic Facilities and Transportation. The approval process must include review and approval by all appropriate and applicable state agencies, boards, and local officials as required by the Arkansas Public School Academic Facility Manual. Final construction documents must be submitted to the Design Review Section of the Arkansas Building Authority to ensure compliance with the Americans with Disabilities Act Accessibility Guidelines. (Authority: Ark. Code Ann. § 6-20-1407.)

Who may prepare building plans and specifications?

For a project exceeding \$25,000, any engineering work must be performed by a licensed engineer. For a project exceeding \$100,000, any architectural work must be performed by a licensed architect. These requirements do not apply if the plans and specifications are furnished by an authorized state agency. (Authority: Ark. Code Ann. § 22-9-101.)

How does a district procure professional services such as an engineer or architect?

Legal, financial advisory, architectural, engineering, construction management, and land surveying professional consultant services must be procured by a Request for Qualifications without competitive bidding. A district may evaluate current statements of qualifications and performance data of firms on file, or a district may request such information as needed for a particular public project whenever a project requiring professional services is proposed. All other professional services may be competitively bid, but a district's Board of Directors may waive competitive bidding for such services by a two-thirds (2/3) vote. (Authority: Ark. Code Ann. § 19-11-801 et seq.)

Must any part of the contractor's payments be retained by the school district?

If a contractor retained by a school district is required to furnish a performance bond, the district must pay 95% of earned progress payments when due and retain 5% to assure faithful performance. All sums retained by the district must be paid to the contractor within thirty days of contract completion, assuming the contractor has faithfully performed the contract in full. (Authority: Ark. Code Ann. § 22-9-601 & 604.)